IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 7289 of 2005

PUKHRAJ & ORS.
V/S
STATE & ORS.

Mr. BN KALLA, for the appellant / petitioner

Date of Order : 26.4.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the petitioner.

By the impugned order, the suit of the plaintiff, which was dismissed in default, has been restored. It is contended by learned counsel, firstly, that some of the defendants had already expired long back, and their LRs have not been brought on record, therefore, the suit could not be restored. The other submission made is, that in view of Annex.7, it was way-back on 13.4.2000 itself, that it had become clear to the plaintiff, that the suit had been decided, as such, there was no justification for not filing restoration application till 29.1.2001, therefore also, the suit could not be restored.

A perusal of the documents filed by the petitioner shows, that it appears that the litigation was carried in the Courts superior in hierarchy, sequentially, in the

matter of temporary injunction, and therein, the record of the original suit has also been requisitioned, and after the record was returned to the learned trial Court, no date of hearing was intimated to the plaintiff, apart from the fact, that in the interregnum period, the plaintiff's counsel, Shanti Lal expired, despite that sometimes the Court recorded the proceedings, marking attendance of the counsel for the parties, and for want of any information, about date of hearing, the plaintiff could not know about the suit having been dismissed.

In my view, an overall comprehension of the things, as emerges from the impugned orders, it cannot be said, that the learned Board of Revenue was in error in ordering the restoration of the suit.

So far abatement of the suit is concerned, the precise controversy between the parties is, between the plaintiff and the defendant No.2, Pukhraj, the petitioner No.1, who is said to be the purchaser of the property from the mother of the plaintiff, being defendant No.1, who has expired. As transpires from the reading of the plaint, as read to me by learned counsel for the petitioner, the other defendants No.3, 4 and 5, out of whom two have expired, were only alleged to be cultivators of the defendant No.2. In that view of the matter, even if there is any abatement, that is only as against the deceased-defendants only, and

entire suit cannot be said to have abated.

Considering the case from all stand points, I do not find any sufficient ground to interfere with the order of restoration of the suit.

The writ petition is, therefore, dismissed summarily.

(N P GUPTA),J.

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